IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) R.S.A.No.29 of 1991
Date of decision : 6.9.2006

Jaswant Kaur

.....Appellant

Vs.

Harbhajan Singh & others

....Respondents

2) R.S.A.No.1698 of 2004
Date of decision : 6.9.2006

Daljit Singh

.....Appellant

Vs.

Balbir Singh & others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : Mr. Mukul Aggarwal Advocate
for the appellant(in both the appeals).

Mr. C.B.Goel, Advocate with
Mr. Nitin Jain, Advocate &
Mr. Sunil Polish, Advocate
for the respondents (in both the appeals).

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MAHESH GROVER, J(O).

The present judgment will dispose of Regular Second

Appeals No.29 of 1991 and 1698 of 2004 as the facts and controversy raised therein are intertwined. The facts are extracted from Regular Second Appeal No.29 of 1991.

The Regular Second Appeal No.29 of 1991has been filed against the judgment of the learned trial Court dated 17.11.1988 and the judgment of the lower appellate Court dated 17.10.1990.

The plaintiff-appellant filed a suit for permanent injunction seeking to restrain the respondents from interfering in the suit property and for restraining them from taking its forcible possession. It was pleaded that the appellant is the widow of one Hari Singh who was the mortgagee in possession of the land in question and that the respondents were trying to interfere in the peaceful possession of the suit property without any legal right.

The respondents, who were the defendants in the suit, resisted the suit of the appellant and pleaded that the mortgage had been got redeemed by the mortgagor Shiv Singh (since expired and represented by his legal heirs) on payment of the entire mortgage amount of Rs.400/- and a receipt was executed on 10.3.1956 by the mortgagee Hari Singh in favour of the respondents. The possession of the appellant on the suit property was denied and rather it was

pleaded that the respondents were in continuous possession of the suit property after the redemption of the mortgagee.

From the pleadings of the parties, the following issues were framed :

1. Whether the suit is not maintainable in the present form?OPD
2. Whether the plaintiff is estopped from filing the present suit on account of her act, conduct and admission?OPD
3. Whether the suit is bad for non-joinder of necessary parties?OPD
4. Whether the suit is not properly valued for the purposes of court fee and jurisdiction?OPD
5. Whether the plaintiff is in possession of the suit property as mortgagee?OPP
6. Whether the suit property has been got redeemed by the defendants vide receipt dated 10.3.56 as alleged?OPD
7. Whether the plaintiff is entitled to injunction prayed for?OPP

8. Relief.

The trial Court dismissed the suit of the appellant and held that the mortgage in question had been redeemed vide receipt Ex.D.1 dated 10.3.1956 and further held the appellant to be in unauthorised occupation of the suit property. The relief of injunction was declined on the ground that no injunction could be granted against a true owner. In appeal, the learned lower appellate Court affirmed the findings of the learned trial court but held that the appellant could be dispossessed only in accordance with law.

After the passing of the judgment and decree of the lower appellate court to the above noted effect on 17.10.1990, a civil suit bearing No.588 of 1990 for possession was initiated by the present respondents which was decreed by the learned trial court on 12.2.1999. In appeal against this judgment, the findings of the trial court were affirmed by the learned lower appellate Court on 14.11.2003 and the respondents were held entitled to the possession of the suit property (which is also the subject matter of the Regular Second Appeal No.29 of 1990). Regular Second Appeal No.1698 of 2004 is arising from the judgment and decree dated 14.11.2003.

The contention raised by the learned counsel for the

appellant is that the receipt Ex.D.1 dated 10.3.1956 could not be taken into consideration as it was an unregistered document and was in complete violation of the provisions of Section 17(1)(b) of the Registration Act, 1908 (hereinafter referred to as "the Act"). In support of his contention he has relied upon a judgment of this Court reported as 1979 P.L.J. 444 **Kundan Singh and others v. Fauja Singh and others**.

The learned counsel for the respondents sought to repel this contention to say that Section 17(2)(xi) of the Act did not require any registration as it was merely an acknowledgment of the payment of the amount of mortgage and did not extinguish the mortgage to attract the provisions of Section 17(1)(b) of the Act.

I have given my thoughtful consideration to the rival contentions raised by the learned counsel for the parties.

Section 17(1)(b) and Section 17(2)(xi) of the Act read as under :

> "17. **Documents of which registration is compulsory.** --(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the

date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

(a) .....

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(2) Nothing in clauses (b) and (c)of sub-section (1) applies to --

(i) to (x) ....

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or"

Both the Courts have returned a concurrent finding qua

the redemption of the mortgage and also the fact that the appellant was in possession of the suit land. The controversy, therefore, stands narrowed down to one aspect of the matter as to whether the receipt Ex.D.1 was required to be registered under Section 17(1)(b) of the Act and that whether it could be read in evidence or not. A perusal of receipt Ex.D.1 and its contents reveals that it was merely an acknowledgment of the receipt of the amount of Rs.400/- and it nowhere stated as to whether the rights of the mortgagee were being extinguished or not. The receipt bears a stipulation that "it is being executed so that it may be used at the time of need". In view of this, the provisions of Section 17(2)(xi) of the Act would be attracted and the receipt as such would not require any registration. Undoubtedly, if the receipt purported to extinguish the mortgage by itself, then it would have been compulsorily registrable.

Besides, the plea of the appellant was denial of the execution of receipt which has been disbelieved by both the Courts below. There is nothing on record to persuade this Court to give a contrary finding.

Apart from that, subsequent to the judgment of the learned lower appellate Court dated 17.10.1990 the suit for

possession initiated by the respondent No.2 Sagar Singh has also been answered in his favour and the finding has been affirmed by the lower appellate Court vide its judgment dated 14.11.2003.

In view of this, there is no merit in both the appeals which are accordingly dismissed. As a consequence thereof, the respondents shall be held entitled to the possession of the suit property.

6.9.2006 (MAHESH GROVER)
JUDGE

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